

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. No.1423 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

1. Smt. Astami Kanji, W/o Late Madhav Kanji, Ex-Gangman under PWI (Con), Eastern Railway, Baruipara, aged about 49 years, Housewife, at present residing at Village, Abada, P.O. Sankrail, Dist. Howrah.

2. Srikanta Kanji, S/o Late Mahadev Kaji, Ex-Gangman, at present residing at Village Abada, P.O. Sankrail, Dt. Howrah

.... Applicants

VS

1. Union of India, services through General Manager, Eastern Railway, Fairlie Place, Calcutta-1;

2. General Manager, Eastern Railway, Fairlie Place, Calcutta-1

3. Chief Engineer (Con.), Eastern Railway, 14, Strand Road, Calcutta-1

4. Chief Personnel Officer, Eastern Railway, Fairlie Place, Calcutta-1

.... Respondents

For the Applicants : Mr. B.C. Sinha, counsel
Mr. P.K. Ghosh, counsel

For the Respondents: Mr. P.K. Arora, counsel

Heard on 29.4.1999 : : Date of order: 29.4.1999

O R D E R

The dispute raised in this application is about the grant of compassionate appointment to applicant No.2, Shri Srikanta Kanji, who is the son of deceased Casual Labour, Late Mahadev Kanji, ex-Gangman who died while in service under PWI (Con.), Eastern Railway, Baruipara. According to the applicants, late Mahadev Kanji, ex-Gangman died on 17.6.87 leaving behind his widow, applicant No.1 who is 42 years along with three sons and one unmarried daughter aged 28 years, 26 years, 20 years and 10 years 5 months respectively. Immediately after the death of the deceased employee, wife Smt. Astami Bala Kanji, applicant No.1

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made an application for appointment of her son in the Railway on compassionate ground due to her husband's premature death. On receipt of the said application the Chief Engineer (Con. No.II) of Construction Department recommended his case to the Chief Personnel Officer, Eastern Railway, Calcutta for appointment on compassionate ground vide letter dated 21.9.89, Annexure/A5 to the application. Despite that recommendation the respondents did not consider the case of the applicants and rejected the prayer vide letter dated 7.3.90, Annexure/R1 to the reply stating interalia that the applicant No.2 is an illiterate candidate and in terms of the extant orders of the Railway Board an illiterate cannot be appointed in the Railway and that letter has been issued by some officer on behalf of the Chief Personnel Officer. Thereafter the applicants approached this Tribunal by filing this application on 3.12.96 and seeking direction upon the respondents to consider the case of the applicant No.2 for appointment on compassionate ground as per rules.

2. The respondents filed a written reply denying the claim of the applicants. It is stated by the respondents that the ex-Gangman was engaged in the Railway as a Casual Labour on daily rate basis on 25.3.69 and subsequently acquired temporary status with effect from 1.1.84. Thereafter he expired on 17.6.87. It is also stated by the respondents that in the application dated 29.3.89 the applicant No.2 declared that he did not know how to read and write and put his L.T.I. in the said application. On consideration of his statement made in the application, the CPO turned down his request for compassionate appointment in the Railway on the ground of illiteracy as per extant order of Railway Board. It is also stated by the respondents that after lapse of one and a half years, the applicant No.2 again submitted all applications duly signed by him along with a school certificate stating that he read upto Class VI and such statement is contrary to his earlier statement made in the application.



Accordingly, his application was rejected after due consideration. Thereby the applicants are not entitled to get any relief in this application. It is also stated by the respondents that the application is hopelessly barred by limitation.

3. Mr. Sinha, learned advocate appearing on behalf of the applicants has relied on the judgment dated 18.1.95 passed in OA 123/91 (Pratima Devi and another vs. Union of India & ors.) and another judgment dated 26.2.97 passed in OA 235/95 (Sahadeb Bera and others vs. Union of India and others) and submits that the prescribed qualification is relaxable in the case of compassionate appointment and thereby the ground of refusal, as stated by the respondents is not sustainable. Mr. Sinha, learned advocate further submits that the application of applicant No.2 was not sent to the competent authority, i.e., the General Manager who could have exercise his discretionary power for relaxation of qualification, if it was at all required for the purpose of appointment of applicant No.2. So, his case was not considered by the competent authority. Hence the order of rejection is void ab initio and liable to be quashed. Mr. Sinha has also drawn my attention to para 5 of the ^{in his} letter containing Estt. Srl. No.18/87 bearing No.P/Comp/Poly/III/407 dated 20.1.87 which contained that Ministry of Railways have now decided that if a casual labourer with temporary status dies in harness, i.e. during his employment with Railways and if the case presents features constituting extreme hardship, meriting special consideration, the General Manager could exercise his personal discretionary power for giving appointment to eligible and suitable ward of such casual labour on compassionate grounds. Such appointment will be only in the form of engagement as casual labour (fresh face) or as substitute. The Ministry expect this power to be exercised judiciously keeping in view in particular the need to contain the total casual labour force as enjoined in the extant instructions on the subject. Citing this

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Mr. Sinha contends that even illiterate person can be appointed on compassionate ground by relaxation of rules and since the family is still in distress position, the case of applicant No.2 should be considered by the respondents despite the rejection of earlier claim made in 1989.

4. Mr. Arora, learned advocate appearing on behalf of the respondents submits that the application is hopelessly barred by limitation. According to Mr. Arora, the applicant No.2 applied for compassionate appointment in the year of 1987 and his application has been rejected by the authority i.e., Chief Personnel Officer by a letter dated 17.3.90, Annexure/R1 to the reply, to whom it was forwarded by the officer for consideration. Mr. Arora, learned advocate has drawn my attention to the Serial bearing No.171/85, Circular No.E 368/O/P dated 19.12.85 regarding the recruitment to Group 'D' (Class IV) posts - minimum educational qualification and submits that in view of the Railway Recruitment Rules the minimum qualification for even Safaiwala is a pass in the fifth standard only and Mr. Arora submits that the applicant No.2 did not come with a clean hand before this Tribunal and authority in view of the suppression of the material fact about his educational qualification when in his earlier application he had stated that he did not know how to read and write and subsequently he submitted another application which shows that he read upto Class IV. Thereby his case cannot be considered by the authority since he is not at all eligible and suitable for the purpose of appointment on compassionate ground.

5. In view of the aforesaid circumstances I have considered the submissions of the learned advocates of both sides. On a perusal of the Annexure/R2 i.e., Circular bearing Serial No.171/85 it is found that the minimum BB qualifications as mentioned in the said circular will apply to engagement of fresh faces as casual labour or as substitutes, as also for direct recruitment in Group 'D' vacancies, wherever engagement of fresh

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faces or direct recruitment is permitted under the instructions in force from time to time. Apparently it is found that the applicant No.2 did not possess any qualification for appointment even as casual labour or Safaiwala which requires minimum qualification of fifth standard. It is also found from the said circular that originally there was no prescribed qualification for recruitment to Group 'D' (Class IV) posts when that circular was issued by the authority. Considering the absence of such educational qualification the Railway authority has considered the fact and prescribed minimum educational qualification in respect of Group 'D' posts including Casual Labour. But in the instant case I find that applicant No.2's case was rejected by the authority in the year of 1990 by a letter dated 7.3.90, Annexure/R1 to the reply. According to Mr. Sinha, that order is a void order and hence the question of limitation would not apply. I find no substance in the argument of Mr. Sinha. Even a void order is challengeable in the Court of Law within the prescribed limitation. The original order takes effect from the year of communication i.e., 7.3.90. Thereafter it is found that the applicants approached this Tribunal in the year of 1996 after six years from the date of rejection. I find that a similar case has been considered by the Hon'ble Apex Court in the case of Dhalla Ram vs. Union of India and others, reported in 1998 SCC(L&S) 112. In that case the applicant's father died on 13.12.65 when he was below 6 years. He completed 18 years of age on 12.7.77 and made an application on 15.7.87 for employment on compassionate grounds. The Hon'ble Apex Court observed that the very object of making appointment on compassionate grounds is to rehabilitate the family in distress of the deceased employee who dies in harness. There should be no difficulty in considering an eligible candidate for providing immediate sustenance to the members of the deceased employee. He had applied on 15.7.87 and the application was rejected on 14.7.1988. He filed the OA on



12.7.1993. In view of the long delay, after the refusal by the Government, in filing the application, the same cannot be entertained. In the instant case I have no other alternative but to accept the judgment of the Hon'ble Apex Court since the applicant filed this application only in 1996 though his prayer was rejected by the authority on 7.3.1990. The Hon'ble Apex Court in another judgment in the case of State of U.P. and others vs. Paras Nath, reported in 1998 SCC(L&S) 570 considered the similar fact and rejected the belated application which was made after 17 years of the death of the employee simply on the ground that the family has been able to manage somehow all these years. In the instant case the employee has died in the year 1987 and the applicants approached this Tribunal in year 1996 after lapse of 9 years. That indicates that the family had to manage without any financial assistance by way of compassionate appointment. Moreover, Mr. Arora, learned advocate submits that two sons of the deceased were found employed and the family cannot be said to be in indigent condition on the face of the earning of two members of the family on the date of death of the father of the applicant No.2. Mr. Sinha, learned advocate submits that two sons who are employed are living separately and they do not render any financial assistance. However, I cannot overlook the fact that compassionate appointment is not an enforceable right and the discretionary power has been given to the authority in certain cases on instructions from time to time and the Tribunal cannot substitute his own view, unless it is found that the decision communicated to the party is perverse and unwarranted by the facts and circumstances of the case. In the instant case I find that ~~some~~ ^{the} reason has been assigned by the officer to whom the application was forwarded for recommendation and it is due to this reason the applicant No.2 could not be granted compassionate appointment. In view of the aforesaid circumstances it would not be just and proper to interfere into

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the matter. Moreover, the applicant No.2 stated in his earlier application that he did not know how to read and write. If it is true, it is not understandable how he obtained the certificate subsequently to the effect that he read upto class IV. This shows that the applicant No.2 did not come with clean hand for getting the benefit of appointment on compassionate ground.

6. In view of the aforesaid I do not find that it is a fit case for appointment on compassionate ground. Thereby the application is devoid of merit and is liable to be rejected and accordingly it is dismissed without awarding any order as to costs.

1/2/1949
(D. Purkayastha)

MEMBER (J)